In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-664

JOHN J. McDONOUGH, ET AL.,
PETITIONERS,

v.

TALLULAH MORGAN, ET AL.,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Petitioners are the School Committee of the City of Boston, Massachusetts, and John J. McDonough, Paul R. Tierney, Kathleen Sullivan, David I. Finnegan and Elvira Palladino as members of said Committee.

Respondents are certified representatives of a class of black parents and children attending the Boston public schools.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered on August 17, 1976.

Opinions Below

The opinion of the Court of Appeals for the First Circuit is not reported at this writing, but the slip opinion is reproduced in the separate Appendix, commencing at page 176.

Certain findings of the District Court for the District of Massachusetts were announced from the bench on December 9, 1975, the stenographic transcript of those proceedings being reproduced in the separate Appendix commencing at page 19, along with the Plaintiffs' Motion for Further Relief Concerning South Boston High School (A. 1) to which the District Court made reference in its oral findings.

The District Court's Supplementary Findings and Conclusions on Plaintiffs' Motion Concerning South Boston High School are reported at 409 F. Supp. 1141 (D. Mass. 1975) and are reproduced in the separate Appendix, commencing at page 90.[1]

Judgments Below

The order of the District Court placing South Boston High School under the temporary receivership of the District Court was announced orally on December 9, 1975 (A. 27, 38-41), and was confirmed in the Order Concerning South Boston High School, dated December 9, 1975, which written order is reproduced in the separate Appendix, commencing at page 55.[2]

Related orders of the District Court enjoining all administrative appointments by the petitioners for a four-week

[1] On January 5, 1976, the District Court entered minor Corrections in Supplementary Findings Filed December 16, 1975 (A. 143).

[2] Minor modifications to the December 9, 1975 Order Concerning South Boston High School were entered by the District Court on December 24, 1975 (A. 114), June 22, 1976 (A. 174), and August 13, 1976 (A. 175).

period (A. 40-41, 52-53), and for repairs to, and supplies for, South Boston High School (A. 115, 137-140) are also reproduced in the separate Appendix. Their relation to the subject matter of the instant petition is discussed in the Statement of the Case, *infra*.

The judgment of the Court of Appeals for the First Circuit was entered August 17, 1976, and is reproduced in the separate Appendix at page 191.

Jurisdiction

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C., §1254(1) and Rule 22(3). The judgment of the Court of Appeals was entered on August 17, 1976, and this petition was filed within ninety (90) days of that date.

Questions Presented

May a federal district court, ostensibly in aid of a desegregation plan, wholly remove a public high school from all control of those officials elected to make educational policy?

Assuming receivership is a valid remedy, what are the standards for determining whether that remedy is required in a given case?

Constitutional Provisions Involved

Fourteenth Amendment:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

This is a school desegregation case in which petitioners, publicly elected[3] officials constituting the School Committee of the City of Boston, seek review of the judgment of the United States Court of Appeals for the First Circuit affirming an order of the United States District Court for the District of Massachusetts which placed a public high school under the receivership of the District Court.

In June, 1974, the District Court for the District of Massachusetts found that the petitioners had intentionally segregated the Boston public schools, *Morgan* v. *Hennigan,* 379 F. Supp. 410 (D. Mass. 1974), which finding was affirmed by the Court of Appeals for the First Circuit, *Morgan* v. *Kerrigan,* 509 F. 2d 580 (1st Cir., 1974), *cert. den.* 421 U.S. 963 (1975).

Having found liability, the District Court ordered into effect for the 1974-1975 school year a student desegregation plan of a limited scope, initially mandated by the Supreme Judicial Court of Massachusetts, *Morgan* v. *Hennigan,* 379 F. Supp. 410, 484 (D. Mass. 1974), which plan became known as "Phase I." (A. 177).

Thereafter, the District Court promulgated a citywide

[3] Mass. St. 1821, c. 110, as amended. As set forth in the City of Boston Code, St. 15, §3 (codifying the various special Acts of the Massachusetts Legislature pertaining to Boston), "[t]he school committee shall have the supervision and direction of the [Boston] public schools. . ."

desegregation plan for the Boston public schools on May 10, 1975, but deferred entry of its Memorandum of Decision and Remedial Orders until June 5, 1975. *Morgan* v. *Kerrigan,* 401 F. Supp. 216 (D. Mass. 1975). This plan, which became known as "Phase II," went into effect in the 1975-1976 school year and was affirmed on appeal to the First Circuit. *Morgan* v. *Kerrigan,* 530 F. 2d 401 (1st Cir., 1976), *cert. den. sub. nom. Morgan* v. *McDonough,* —— U.S. ——, 44 U.S. L.W. 3719 (6/14/76).

On Tuesday, November 18, 1975 (Docket, *Morgan* v. *McDonough,* D. Mass., C.A. 72-911-G) the respondents filed their Motion for Further Relief Concerning South Boston High School (A. 1), which motion contained eighty-nine pages of attachments (in large part, affidavits of fifteen unidentified black students concerning conditions at the school) and which sought, in essence, the closing of that school on the grounds that black students there were being denied a peaceful, desegregated education.

On Wednesday, November 19, 1975, the District Court entered its Notice of Hearing and Procedural Orders (A. 13) which set down the respondents' motion for a hearing at 10:00 a.m. on Friday, November 21, 1975, and mandated that the matter would be heard on affidavits, "except that the court may at the hearing direct that certain affiants and other persons whose attendance is ordered herein give oral testimony." (A. 13). Those persons included the Deputy Superintendent of the Boston public schools, the District Superintendent of the District within which South Boston High School is located, the Headmaster of the school, certain of its faculty, and certain of the student affiants (A. 13-14). The petitioners were further ordered to file, by the hearing date, comprehensive information on the students, faculty and staff at the school (A. 14-15).

On Thursday, November 20, 1975, the petitioners filed an Objection to Notice of Hearing and Procedural Orders and

Motion for Continuance (A. 16) wherein they noted that their counsel had not received the Notice of Hearing until 4:30 p.m. on November 19, 1975 (A. 17), that such short notice denied petitioners a fair trial on the issues, that they were prevented adequate preparation, that the hearing was unduly preferential to the respondents and that, in the interests of due process, a thirty-day continuance was in order (A. 17-18).

Petitioners' motion was denied at the outset of the hearing on Friday, November 21, 1975, and the evidentiary hearings commenced on that date,[4] continued on through

[4] Fairly typical of the fashion in which the hearings were conducted by the District Court is this exchange between counsel and the District Court prior to the luncheon recess on Saturday, November 22, 1976:

> Mr. Tierney [Counsel for Petitioners]: Your Honor, pardon me. Before we recess, could the Court indicate what witness will be called after Mr. Cunningham?
>
> The Court: I don't know. I just don't know. I will try to figure that out.
>
> Have you got something you want to put on after the noon recess?
>
> Mr. Tierney: No, sir. I just would like to know the witness so I could possibly prepare. Are the students going to be called back?
>
> The Court: It depends. When you get to the students, it seems to be cumulative. If there is something more significant, I would like to move on to that, Mr. Van Loon.
>
> Mr. Van Loon [Counsel for Respondents]: At least one of the students, your Honor, begins on Monday on a new job orientation and school programming and I would like, if possible, to have the student heard today.
>
> The Court: Who is that?
>
> Mr. Van Loon: Phyllis Ellison.
>
> The Court: All right. That is a factor.
>
> Mr. Moloney [Counsel for the Mayor]: I was going to share Mr. Tierney's request that the hearing would go more quickly if counsel were able to know about what areas the Court was interested in.
>
> The Court: Well, if you haven't gotten the drift by this time, I am afraid I can't explain it in the next minute or two.
>
> Mr. Moloney: I understand the nature of the hearing now, your Honor, but if we don't know what the witnesses are, there is nothing we can accomplish during lunch to prepare for this afternoon.
>
> The Court: Well, maybe you will enjoy your lunch more. (Transcript, pages 121-122)

[The "drift" of the hearings referred to by the Court was that the hearings were not intended to "fix liability on any particular individuals . . . [but] to determine larger issues . . . connected with whether the desegregation plan . . . is [was] being implemented . . . at South Boston High School." (A. 22)]

Saturday, November 22, Monday, November 24, Tuesday, November 25, Wednesday, November 26 and concluded with argument on Friday, November 28, 1975.

On December 9, 1975, the District Court announced findings from the bench to the effect that the plaintiffs had proven the allegations in their motion (A. 20-27), that black students at South Boston High School were not receiving the peaceful, desegregated education to which they were entitled under the Fourteenth Amendment, and that the Phase II desegregation plan was not being carried out at South Boston High School (A. 27).

In essence, the Court found that black students at South Boston High School had been subjected to discriminatory treatment; that, on occasion, they had been physically attacked by groups of white students; that black students were subjected to verbal abuse; that the situation at the school was part of a pattern of racially discriminatory and hostile conduct which existed even prior to court-ordered desegregation and which was largely the result of efforts of organizations in the South Boston community; and that the school remained racially identifiable because of the presence of school staff and police who were overwhelmingly white (A. 3-12, 20-22, 26-27). The only finding made as to petitioners' conduct was that they had failed to act against persons urging truancy (A. 21-22).

Having stated its findings of facts and conclusions of law, the District Court announced from the bench its order removing South Boston High School from petitioners' control and placing it under the receivership of the Court, man-

dating the transfer of the headmaster[5] and all full-time academic administrative staff from the school and naming the District Superintendent (within whose District the school lies) as temporary receiver (A. 27, 38-41).

Also from the bench on December 9, 1975, the District Court enjoined the petitioners from making any administrative appointments in the Boston shool system, without prior court approval, until January 6, 1976, when the successor school committee would take office.[6] This injunction was based, in part, on the Court's view that the desegregation plan had to be "protect[ed] . . . from being frustrated and defeated by the lame duck School Committee, whose majority . . . I speak of the majority of those members who have done at least everything, in my opinion, that they could *lawfully* do to delay implementation of this desegregation plan." (emphasis added) (A. 43).

On December 16, 1976, the Court entered its Supplementary Findings and Conclusions on Plaintiffs' Motion Concerning South Boston High School (A. 90) wherein the Court noted, *inter alia*, that it had made two visits[7] to the school; that from the two visits it concluded that the services at the school were primarily custodial and only incidentally educational; that the numbers of teachers and

[5] The transfer of the headmaster, Dr. William J. Reid, was based on the District Court's opinion that the changes to be made at the school could not be accomplished under his leadership and on findings critical of the headmaster's performance (A. 107-109, 182-183), despite the Court's expressed view that individual liability was not an issue in the hearings. *Supra*, n. 4.

[6] In November, 1975, there was a municipal election in the City of Boston in which two new members were elected to the five-member School Committee of the City of Boston to take office on January 5, 1976. Thus, at the time of the entry of the order suspending petitioners' appointive powers, two of the members of the School Committee were in a "lame duck" status.

[7] These unannounced visits to the school, on November 26, 1975, during the course of the hearings and again on December 2, 1975 (A. 91) were, in effect, a view taken during litigation conducted without notice to, and opportunity for, counsel to attend.

students at the school were overstated and that the attendance was declining; that the school remained identifiably white; that there was voluntary segregation by the students in that school; that the faculty's attitude had impeded integration; and that the school was surrounded by evidence of racial hostility (A. 90-109).

In the meanwhile, the District Court had entered a written Order Concerning South Boston High School dated December 9, 1975 (A. 55) which order confirmed the placing of South Boston High School under the temporary receivership of the District Court effective December 10, 1975, and the appointment of the District Superintendent as temporary receiver[8] (A. 55). As paraphrased by the Court of Appeals, the District Court's written order of December 9, 1975, directed the

> "receiver to (1) arrange for the transfer of the School's headmaster, full-time academic administrators and football coach without reduction in compensation, benefits or seniority; (2) evaluate the qualifications of all faculty and educational personnel and arrange the transfer and replacement of whomever he sees fit for the purposes of desegregation, without reduction in compensation, benefits or seniority; (3) file a plan with the court for the renovation of the School; (4) try to enroll non-attending students and establish catch-up classes; and (5) make recommendations to the court relative to certain provisions of the plan." (A. 177-178).

Contemporaneously with the entry written "receivership order" the Court entered a written order confirming the

[8] On January 6, 1976, the District Court substituted the defendant Superintendent of Boston public schools as receiver (A. 144-145). On December 24, 1975, the District Court made minor modifications in that part of the receivership order mandating the transfer of administrative staff from the school (A. 114-115).

suspension of the petitioners' appointive powers until January 6, 1976 (the "suspension order"). (A. 53-54).

Petitioners had moved, on December 10, 1975, for a stay of the receivership and suspension orders in both the District Court (A. 58) and the Court of Appeals for the First Circuit (A. 59). On December 15, 1975, the District Court denied the motion from the bench (A. 85), and petitioners renewed their motion to stay in the Court of Appeals (A. 89). By Memorandum and Order entered December 19, 1975, the Court of Appeals declined to stay the orders (A. 110).

On December 24, 1975, the District Court entered a written order mandating repairs and renovations at, and purchase of supplies for, South Boston High School (A. 115), and again on December 31, 1975, entered like "repair orders" from the bench (A. 137-140).

During the pendency of the petitioners' appeal to the First Circuit from the receivership, suspension and repair orders, the District Court, on February 11, 1976, entered a further "repair order" (A. 145), as well as orders on April 7, (A. 166) and June 4, 1976 (A. 172), which directed the petitioners to vote the appointment at South Boston High School of a headmaster and assistant headmasters selected by the Court and the receiver.[9]

On August 17, 1976, the Court of Appeals for the First Circuit affirmed the receivership order, the suspension order, insofar as it was not moot, and the repair orders (A. 176-191).

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[9] Appeals from these orders of February 11, April 7 and June 4, 1976, are pending before the First Circuit, as well as appeals from orders entered by the District Court on August 20 (A. 192) and September 27, 1976 (A. 194), which directed further votes of the petitioners for the appointment of administrative staff at South Boston High School. *Morgan* v. *McDonough*, 1st Cir., Nos. 76-1121, 76-1239, 76-1426.

Reasons for Granting the Writ

In affirming the District Court's receivership order of December 9, 1975, not only has the Court of Appeals decided important questions of constitutional dimension which should be settled by this Court, but has decided those questions in a way which conflicts with the applicable decisions of this Court.[10]

The important questions of unsettled federal law decided by the Court of Appeals are, of course, first, whether the imposition of a receivership on a public school—operated by locally elected public officials—by a federal district court is within the limits of the latter court's power in a desegregation case; and, secondly, if within the limits of its power, what are the correct standards for making that determination?

It is the position of the petitioners here that the task constitutionally assigned the District Court was only to dismantle a dual school system. Relishing too much its assignment, the Court overzealously designed its own high school and equipped it with wall-to-wall educational policy tightly insulated from the democratic process.

A. *Is Receivership Within the Power of the District Court?*

This Court has recognized that "No fixed or even substantially fixed guidelines can be established as to how far a [desegregation] court can go, but it must be recognized

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[10] At the outset it should be noted that any discretionary review by this Court, with the potential for reversal which such review carries with it, will not involve the overturning, delaying or rendering uncertain of a wholesale desegregation plan. Such a plan is now in its second year of operation in Boston and this Court has declined to review its merits. *Morgan* v. *McDonough*, ___ U.S. ___, 44 U.S.L.W. 3719 (6/14/76).

that *there are limits.* The objective is to dismantle the dual school system." (emphasis added). *Swann* v. *Charlotte-Mecklenberg Board of Education,* 402 U.S. 1, 28 (1971). The instant petition presents to this Court the opportunity to clarify those limits in the context of a concrete fact situation, which clarification will serve to guide other courts and litigants in other desegregation situations. Should, however, the receivership order of the District Court and its affirmance by the Court of Appeals for the First Circuit be allowed to stand unreviewed, a further aggrandizement of power by the federal courts will have been achieved at the expense of the continuing erosion of local governmental integrity.

The Court of Appeals candidly concedes that "a receivership has been instituted only once in a reported desegregation case, *Turner* v. *Goolsby,* 255 F. Supp. 724 (S.D.Ga. 1966) . . ."[11] (A. 185), and acknowledges that "the court's actions . . . supplanted the supervisory authority of the elected Committee . . ." (A. 188). It went on to reason, however, that

> "judicial desegregation necessarily involves some displacement of decision-making powers, as we have already witnessed in other aspects of this case, e.g. drawing of district lines, teacher hiring, and so on. And the limitation of decision-making in the schools so as to comply with constitutional rights is not without precedent in other areas. *See, e.g., Epperson* v. *Arkansas,* 393 U.S. 97 (1968); *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624 (1943);

[11] *Turner* was not appealed and involved appointed, not publicly elected, officials. (See *Turner* v. *Fouche,* 396 U.S. 346, 348-349 (1970) involving a challenge to Georgia's method of selecting juries and school boards.) As distinguished, it hardly stands as precedent for the District Court's action.

> *Meyer* v. *Nebraska,* 262 U.S. 390 (1923). The extent of the court's power is limited to what is required to ensure students their right to a non-segregated education, but *within that parameter it may do what reasonably it must. Cf. Griffin* v. *County School Board,* [377 U.S. 218 (1964)]; *Faubus* v. *United States,* 254 F.2d 797, 806 (8th Cir.), *cert. denied,* 358 U.S. 829 (1958); *Kasper* v. *Brittain,* 245 F.2d 92 (6th Cir.), *cert. denied,* 355 U.S. 834 (1957)." (emphasis added) (A. 188).

Your petitioners contend that the "parameter" alluded to in the foregoing language is not as elastic as the Court of Appeals for the First Circuit would believe. One must ask whether the precedent established by the Court below is to be read as permitting a desegregation court to place one school after another in receivership until a federal judge is running the school system. This would hardly accord with Mr. Chief Justice Burger's observations in his dissent (joined by Justices Blackmun, Powell and Rehnquist) in *Wright* v. *Council of City of Emporia,* 407 U.S. 451, 477 (1972):

> "In Brown v. Board of Education, 349 U.S. 294 (1955) (*Brown II*), the Court first conferred on the district courts the responsibility to enforce the desegregation of the schools, if school authorities failed to do so, according to equitable remedial principals. While we have emphasized the flexibility of the power of the district courts in this process, *the invocation of remedial jurisdiction is not equivalent to having a school district placed in receivership.*
>
> • • •
>
> "This limitation on the discretion of the district courts involves more than polite deference to the role

> of local governments. Local control is not only vital to continued public support of the schools, but is of overriding importance from an educational standpoint as well." (emphasis added).

And the importance of local control over public schools has consistently been recognized by a majority of this Court. *Milliken* v. *Bradley*, 418 U.S. 717, 741-742 (1974); *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 50 (1973); *Wright* v. *Council of City of Emporia*, 407 U.S. 451, 469 (1972).

It is therefore apparent that, in extending the "limits" of what a desegregation court can do in aid of its efforts to dismantle a dual system, the Court of Appeals has established a unique remedy in clear disregard of the precedents of this Court.

B. *What Are the Standards for the Imposition of a Receivership?*

In this case, the method employed by a District Court involved the unprecedented stripping of the petitioners' control over South Boston High School without the benefit of hearing, after appropriate notice, as to whether the petitioners would be of assistance in remedying the situation at the school and without any substantial evidence that they were responsible for that situation.[12] In fact, the usual judicial sanctions of "contempt proceedings and further injunctions" were dismissed out of hand by the Court of Appeals as "plainly not promising" on its observation that the petitioners in office were uncooperative

[12] Petitioners made clear to the District Court their concern in this regard in their argument on their Motion to Stay. (A. 65).

since "the then School Committee had continuously resisted desegregation." (A. 186-187).[13]

The Court of Appeals went on to state that the District Court

> "had *reason to fear* that even direct orders to the [petitioners] would, *as in the past*, be met by resistance, subterfuge, or, at very least, delay. Furthermore, the South Boston High School problem came to a head when the membership of the School Committee was in lame duck status, a situation that *we may presume* further inhibited the likelihood of prompt action through *normal channels.*" (emphasis added) (A. 187).

But the District Court's findings, summarized by the Court of Appeals, had centered upon South Boston High School's two years of difficulty in adjusting to desegregation (A. 179-180) and had recited the continuing white identifiability of the school (A. 180), the physical and verbal abuse of black students (A. 180-181), the continued segregation (arguably voluntary) of the races within the school (A. 181), the faculty's attitude and failure to implement the desegregation plan (A. 181-182), the failure of the headmaster to take corrective action (A. 182-183), and the District Court's conclusion that the school was "devoid of the youthful spontaneity that one associates with a high school . . . [the students] victims of constant cynical sur-

[13] The District Court, of course, went even further. After indicating its intent to have South Boston High School "run by the Court under receivership until further order" (A. 27) and after giving its reasons for its belief that the school "can be the best high school in the entire city" (A. 27), it proceeded to harangue the petitioners for prior conduct and to suspend, on an interlocutory basis, the petitioners' control over two departments of the school system and their appointive power for four weeks (A. 32, 36, 37, 38, 40-42), matters not even the subject of the evidentiary hearings concerning the school.

veillance, unconcerned, uninvolved and cowed." (A. 95, 183). Nowhere does the Court of Appeals review any finding that the petitioners had caused this situation; nor could it, because the *only* specific finding the District Court made with respect to the petitioners was that they had failed to enforce the State's truancy laws (A. 21-22). Indeed, the Court of Appeals itself recognized that

> "[d]oubtless the difficulty [at the school] stemmed in no small measure from intentional conduct by private organizations and individuals in the South Boston community." (footnote omitted) (A. 184),

but went on to state that

> "difficult as was the position of school officials, there was reason to believe that conditions could have been, and still could be, ameliorated by them and that their *active and passive conduct contributed to the grave situation* so clearly at odds with the court's prior decrees." (A. 184), (emphasis added).

Petitioners are thus blamed, on the basis of their failure to enforce the truancy laws, for a situation caused in large part by community hostility to the Court's desegregation plan.

Yet, as unusual as the District Court's standard was for measuring the petitioners' culpability for the South Boston High School situation, more unorthodox was both Courts' circumvention of the usual course for judicially remedying that situation. Surely, once put on notice that the District Court felt constitutional rights were being infringed at the school, the "local authority" should have been afforded a hearing, with proper notice, to "proffer acceptable remedies." *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 16 (1972). Instead, the District Court, with the sanction of the Court of Appeals, automatically placed itself in the shoes of the publicly elected petitioners and assumed in every respect their plenary powers, *id.* at 15, over the school.

The standard set by both lower Courts in determining that such a radical approach was warranted appears, for all practical purposes, to have been that the petitioners only obeyed direct orders of the District Court. In connection with its observation that the School Committee then in office had resisted desegregation (A. 187), the Court of Appeals noted, as had the District Court twice before in these proceedings (A. 43-44, 109), that the School Committee's "leaders had advised the court on more than one occasion that they would obey nothing but direct orders. The [district] court had reasonable cause, therefore, to discount the likelihood of effective cooperation." (A. 187). Yet there was no showing that there was anything the petitioners themselves could have done, or that the District Court wanted them to do differently, at South Boston High School.

More unusual still is the District Court's pronounced displeasure with petitioners' taking an "advocacy" approach to this ongoing litigation (A. 109, 143-144). Were not the petitioners entitled, in traditional manner, to defend and protect the authority with which they have been entrusted by their electorate? Also, it is well, in passing, to question the wisdom of permitting a district judge, in deciding the issue of the effectiveness of his own desegregation plan, to establish his own rules for the taking of testimony and the examination of witnesses and to make findings of fact and determine questions of law on this issue, as was done here (A. 13-14, 19-27, 90-109, n. 4, *supra*).

• • •

Finally, with respect to both the question of whether receivership is within the limits of a desegregation court's

power and, if it is, the standards to be employed in determining whether it should be imposed, petitioners wish to note the ever increasing involvement of the District Court, tantamount to pre-emption, in educational policy matters. This Court has observed that "[s]chool authorities are traditionally charged with broad power to formulate and implement educational policy . . ." *Swan, supra,* at 16.

Nonetheless, one of the District Court's two experts commissioned by the Court to advise it on a day-to-day basis triumphantly wrote, relative to the Phase II desegregation plan, that "[n]o federal court order issued in the twenty years between *Brown* and *Morgan* . . . had ever been so consciously and explicitly aimed at effective improvements in public education," and concluded that "[a]fter the remedial order . . . every federal case concerning school desegregation will be more than what some lawyers call a 'race case.' Every case will be a case involving detailed educational planning . . ."[14]

The District Court has hewn true to its intent. In deciding that South Boston High School will be "run by the Court" (A. 27), it also decided that the classrooms needed to be painted (A. 116, 138-139), that the cafeteria floor needed scrubbing (A. 118), and that basketballs of particular brand name, whistles and ankle tape (A. 116-117) were necessary under the United States Constitution.

Your petitioners earnestly entreat this Court to draw the line. Absent clarification from this Court, other district courts in other cities confronted with the trauma of desegregation will look to Boston as precedent not only for receivership of a school, but for the wholesale intrusion

[14] Dentler, "Improving Public Education: The Boston School Desegregation Case," *The Advocate*, Suffolk University Law School Journal, Vol. 7, No. 1, Fall, 1975, pp. 4, 8.

by a district court into the educational, as opposed to the integrational, process.

The receivership order of the District Court is unprecedented and the circumstances surrounding its entry clearly reflect the need for the establishment of standards to be employed in the imposition of such relief. The First Circuit, moreover, has affirmed the receivership and the method of its imposition in the absence of precedent and contrary to the admonitions of this Court concerning the regard due local control of public education.

Other courts, other cities, other school boards, other parties plaintiff need the guidance only this Court can give, and such guidance is urgently needed.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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